IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17498 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARMENDRABHAI GORDHANDAS TULSIYANI

Versus

DEPUTY COMMISSIONER (ENFORCEMENT)

Appearance:

1. Special Civil Application No. 17498 of 2003

MR RM CHHAYA with MR SHAMSUDDIN SHAIKH for Petitioner No. 1

MR SIRAJ GORI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 08/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP is directed to waive service of Rule and he accordingly waives service of Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 22.10.2003 (Annexure "A") passed by the Deputy Commissioner of Sales-tax (Enforcement), Ahmedabad rejecting the petitioner's application for fresh registration under Section 30A of the Gujarat Sales-tax Act, 1969 (hereinafter referred to as "the Act") in lieu of the existing certificate of registration.

3. Under sub-section (1) of Section 30A of the Act, every registered dealer who holds, on the date of commencement of the Gujarat Sales Tax (Second Amendment) Act, 2001 (hereinafter referred to as "the specified date - 1.9.2001"), a valid certificate of registration ("the existing certificate of registration") shall obtain a fresh certificate of registration as provided in this section in lieu of the existing certificate of registration. Under sub-section (2), the application for such fresh registration was required to be made in the prescribed manner within the prescribed date. That time limit was initially prescribed as 30.11.2001. The Court is informed that the said time limit was thereafter extended to 15.12.2001. The petitioner, however, made the application on 4.6.2003. That application came to be rejected on the ground that it was not made in the prescribed form and within the time limit. The petitioner, therefore, made another application on 26.6.2003 in the prescribed form which also came to be rejected by the impugned order dated 22.10.2003 (Annexure "A") on the ground that the application was not made within the prescribed time limit alongwith penalty.

4. Mr Chhaya with Mr Shamsuddin Shaikh, learned counsel for the petitioner have submitted that Section 30A enables a dealer to apply for fresh certificate of registration in lieu of existing certificate of registration. There is no dispute about the fact that on the specified date, i.e. on 1.9.2001, the petitioner did hold a fresh certificate of registration. It is true that the time limit prescribed for obtaining such registration was 15.12.2001 but sub-section (4) of Section 30A permits the existing dealer to make an application beyond the prescribed time limit upon payment of penalty at the rate of fifty rupees for every day of default. It is, therefore submitted that since the

petitioner is ready and willing to pay the amount of penalty and has in fact deposited an amount of Rs.27,900/= with the Registry of this Court as directed by the order dated 15.12.2003, the respondents are required to be directed to accept the petitioner's application.

5. On the other hand, Mr Siraj Gori, learned AGP has submitted that apart from the petitioner not having made any application within the time limit specified under sub-section (2), the petitioner has not even made any application for fresh registration by 30.11.2002 which was the extended time limit as per the proviso to sub-section (4). Hence, the application has been rightly rejected.

6. Having heard the learned counsel for the parties, we are of the view that when there is no dispute about the fact that the petitioner was holding a valid certificate of registration on 1.9.2001 (i.e. the specified date) and there is also no dispute about the fact that on the date of filing of the petition, the said existing registration in favour of the petitioner was not cancelled, the petitioner's application for fresh registration under sub-section (2) could not have been rejected on the ground of expiry of any time limit. Sub-section (4) clearly provides that where any registered dealer fails to make an application under sub-section (2), the Commissioner shall impose upon such dealer by way of penalty a sum of fifty rupees for every day after the expiry of the period prescribed under sub-section (2) for making such application during which such default continues. The petitioner has, therefore, deposited a sum of Rs.27,900/- at the rate of Rs.50/- per day for 558 days, which is the period of default, that is the period between 16.12.2001 to 26.6.2003.

7. The submission of Mr Gori, learned AGP that since the application is made beyond 30.11.2002 and, therefore, the application cannot be accepted overlooks the point that the time limit of 30.11.2002 (extended from 31.3.2002) in the proviso to sub-section (4) is for the limited purpose of putting a cap on the amount of penalty which the dealer would have to pay if he were to make the application after the date prescribed under sub-section (2), but if the application is made before the date mentioned in the proviso. Then the maximum penalty would be Rs.1000/-. Since the petitioner did not make the application by 30.11.2002, the only adverse consequence to which the petitioner could have been subjected was to demand penalty at the rate of Rs.50/- per day for the

entire period of default so long as the existing certificate of registration is not cancelled. In the facts of the present case, it clearly transpires that the delay on the part of the petitioner was for the period from 16.12.2001 to 26.6.2003. Hence, subject to the petitioner's liability to pay penalty at the rate of Rs.50/- per day for the aforesaid period, the respondents were required to accept the petitioner's application for fresh registration in lieu of the existing certificate of registration.

8. The affidavit-in-reply filed by the Deputy Commissioner of Sales-tax (Enforcement) at Ahmedabad does not at all deal with the above aspect and it merely harps on 30.11.2002 being the last date for making application for fresh registration. It is true that in paragraph 8 of the reply affidavit, it is stated that since the petitioner did not apply for fresh registration by 30.11.2002, the petitioner is not eligible for certificate of fresh registration and old registration certificate of the petitioner has been cancelled with effect from 1.4.2002. The affidavit, however, does not state as to on which date the old certificate was cancelled nor does the affidavit produce any such order cancelling the previous registration. Mr Chhaya for the petitioner states that the petitioner has not been served with any such order under sub-section (2) of Section 30AA cancelling the existing registration nor has the petitioner been served with any notice under Rule 11A of the Gujarat Sales-tax Rules, 1970.

The submission of learned AGP that in view of the provisions of sub-section 2(b) of Section 30AA, the petitioner's existing registration must be deemed to have been cancelled w.e.f. 1.4.2002 cannot be accepted because sub-section 2(b) does not provide for any such deeming fiction but requires the Commissioner to cancel the registration and sub-section (4) requires the Commissioner to publish such cancellation of certificate within ten days from the date of cancellation. The respondents have not placed on record any such order of cancellation of registration nor any document showing publication of any such order of cancellation.

9. In view of the above discussion, it has to be held that the petitioner's registration existing as on 1.9.2001 was not cancelled when the petitioner made the application for fresh registration under Section 30A(2) on 26.6.2003. Since the petitioner has not only shown his readiness and willingness to pay the amount of penalty at the rate of Rs.50/- per day for the entire

period of default but has actually already deposited the amount with the Registry of this Court at the time of issuance of notice by this Court, this petition is allowed. The impugned order dated 22.10.2003 at Annexure "A" to the petition is hereby quashed and set aside and the respondents are directed to consider the petitioner's application for fresh registration under sub-section (2) of Section 30A after taking into account the amount of penalty already deposited by the petitioner with the Registry of this Court, which shall be permitted to be withdrawn by the respondent-authorities, and subject to verification about the exact quantum of penalty to be levied.

The above direction shall be complied with within two weeks from the date of receipt of the writ of this Court or a certified copy of the order, whichever is earlier.

10. The petition is accordingly allowed in the aforesaid terms.

Rule is made absolute with no order as to costs.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
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